

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION**

Mark Merrill, Susan Merrill, Corey  
McCrackin, Matt Emerick, and Rob Devlin,

Plaintiff,

vs.

Construction Partners, Inc., and Everett Dykes  
Grassing Company, Inc.,

Defendants.

Civil Action No.: 3:21-cv-03488-CMC

**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant Everett Dykes Grassing Company, Inc. (“EDG”), removes the above-captioned action (Case Number 2021-CP-40-04730), currently pending in the Court of Common Pleas for Richland County, South Carolina) to the United States District Court for the District of South Carolina, Columbia Division. EDG bases removal on 28 U.S.C. § 1332, and as grounds for removal, EDG states the following:

**BACKGROUND**

1. Plaintiffs Mark Merrill, Susan Merrill, Corey McCrackin, Matt Emrick, and Rob Devlin (“Plaintiffs”) commenced this action on or about September 24, 2021, by serving EDG with a Summons and Complaint filed in the Court of Common Pleas for Richland County, South Carolina (the “State Court Action”). The State Court Action was assigned case number 2021-CP-40-04730.

2. Plaintiffs allege negligence, breach of warranty, breach of contract, and loss of consortium causes of action against both defendants. In the Complaint, dated September 20, 2021, Plaintiffs prayed for actual and punitive damages in an amount to be determined by a jury. Upon

information and belief, Plaintiffs seek damages in excess of \$75,000, and this case is therefore removable to federal court.

3. Removal to this Court is proper pursuant to 28 U.S.C. §§ 1441(a) and 1446(a). EDG files this Notice of Removal in the United States District Court for the District of South Carolina, Columbia Division, which is the District Court of the United States for the district and division embracing the state court where the State Court Action is pending.

4. Removal is timely, as EDG received Plaintiff's Complaint on September 24, 2021. EDG is filing this Notice of Removal with the United States District Court for the District of South Carolina on October 22, 2021.

5. This Notice of Removal is signed pursuant to Fed. R. Civ. P. 11. *See* 28 U.S.C. § 1446(a).

6. EDG has met all other procedural requirements.

a. Appended hereto as Exhibit A are copies of all process, pleadings, and orders served upon EDG in the State Court Action, namely, the Summons and Complaint. *See* 28 U.S.C. § 1446(a).

b. EDG will also file this Notice of Removal with the Clerk of the Court of Common Pleas for Richland County, South Carolina.

### **STATUTORY REQUIREMENTS**

7. This Court has diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332 because (a) there is complete diversity of citizenship between Plaintiffs and defendants, and (b) the total amount in controversy exceeds \$75,000, exclusive of interest and costs.

**A. Diversity of Citizenship**

8. Diversity of citizenship exists between Plaintiffs and EDG pursuant to 28 U.S.C. § 1332(a)(1), at the time Plaintiff filed the State Court Action.

9. Plaintiffs are citizens and residents of the State of South Carolina. (Complaint ¶¶ 1-4.)

10. At the time of filing of the Summons and Complaint, and service of the same upon EDG, EDG was a corporation organized and existing pursuant to the laws of Georgia with its principal place of business located in Alabama. Thus, EDG is a citizen of Georgia and Alabama for removal purposes. *See* 28 U.S.C. § 1332(c)(1) (defining corporate citizenship); *see also Aiken v. Waffle House, Inc.*, 509 F. Supp. 2d 541, 544 (D.S.C. 2007) (quoting *Heniford v. Am. Motors Sales Corp.*, 471 F.Supp. 328, 334 (D.S.C. 1979)) (holding that “[w]here removal is based on diversity of citizenship, diversity must exist at the time the action is instituted in state court *unless* the removal ‘is premised on the plaintiff’s voluntarily dropping of the nondiverse defendant’”) (emphasis in original).

11. As yet unserved Defendant Construction Partners, Inc. (“CPI”), is a corporation organized and existing pursuant to the laws of Delaware with its principal place of business located in Alabama. Thus, CPI is a citizen of Delaware and Alabama for removal purposes. *See* 28 U.S.C. § 1332(c)(1) (defining corporate citizenship). Once it is served, the undersigned will defend CPI, which will not object to this removal.

12. Neither EDG nor CPI is a citizen of South Carolina, where Plaintiff brought the State Court Action. *See* 28 U.S.C. § 1441(b).

**B. Jurisdictional Amount**

13. The amount in controversy in this case exceeds \$75,000, exclusive of interest and costs. *See* 28 U.S.C. § 1332(a).

14. In light of the claims asserted, it is clear to a legal certainty, or at least within a reasonable probability, that the amount in controversy exceeds \$75,000.

a. Actual Damages. Plaintiff alleges that he has sustained personal injury and other damages. (Complaint ¶¶ 17-19 and 37). Based upon the asserted actual damages, the amount in controversy exceeds \$75,000 to a legal certainty and certainly within a reasonable probability.

b. Punitive Damages. In addition to actual and statutory damages, Plaintiff seeks to recover unspecified punitive damages. (*Id.* at Prayer for Relief). When considering an award of punitive damages in light of the allegations concerning EDG's alleged negligence, breach of warranty, and breach of contract, it is clear that the amount in controversy exceeds \$75,000 to a legal certainty or within a reasonable probability.

15. Based upon the foregoing, this Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332.

WHEREFORE, this action should proceed in the United States District Court for the District of South Carolina, as an action properly removed thereto.

Respectfully submitted,

**HAYNSWORTH SINKLER BOYD, P.A.**

s/Joseph D. Spate

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October 22, 2021  
Columbia, South Carolina

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